TERESA MONOHARY A/P THAIRIYAM & ANOR.

v.

TAN AH LEK

COURT OF APPEAL, KUALA LUMPUR
DATO' N.H. CHAN JCA
DATO' MAHADEV SHANKAR JCA
DATO' V.C. GEORGE JCA
[CIVIL APPEAL NO. B-08-278-95]
10 JULY 1995

PRACTICE & PROCEDURE: *Appeal - Leave to appeal to Court of Appeal - Whether value of subject matter more than RM250,000 - Running down case - Contributory negligence - Meaning of "value of subject-matter of the claim" - Whether "value of subject matter" meant the total damages recoverable - Whether referring to amount defendant actually required to pay.*

In this action for damages arising from a road accident, the High Court assessed damages on a 100% liability at RM250,050.34. The respondent was found to be contributorily negligent to the extent of 25%, and damages recoverable were reduced to RM187,537.84. The appellant intended to appeal against the decision, and thinking that the "value of the subject matter of the claim" was less than RM250,000, filed a notice of motion for leave. The motion only came up for disposal after the expiration of the one month from the date of the decision. Before the Court of Appeal the respondent argued that no extension should be given as the delay was due to Counsel's error. According to the respondent the appellant ought to have filed the notice of appeal straightaway as the total sum recoverable was more, and not less than RM250,000. The sole issue that arose was as to the proper meaning to be given to the phrase "value of the subject matter of the claim" in s. 68(1)(a) Courts of Judicature Act 1964.

Held:

Mahadev Shanker JCA (delivering the judgment of the Court):

Section 68(1)(a) as it stands is unsatisfactory because it is not precise. Because of this it is not right to penalise the appellant for not filing the notice of appeal within time. So even though the Court held that leave was not required in this case, it is directed that the time for filing a notice of appeal be extended for one week.

Per Curiam:

It would be preferable that s. 68(1)(a) should be reworded to provide that no appeal should be brought without leave where the judgment appealed against is for the payment of a monetary sum which is less than RM250,000, exclusive of interest and costs.

[Application dismissed but time for filing notice extended].

*[**Bahasa Malaysia** Translation of Headnotes]*

AMALAN DAN PROSEDUR: *Rayuan - Kebenaran untuk merayu kepada Mahkamah Rayuan - Samada nilai hal-perkara lebih daripada RM250,000 - Kes perlanggaran - Kecuaian sertaan - Maksud "value of subject-matter of the claim" (nilai hal-perkara tuntutan) - Samada "value of subject-matter" (nilai hal-perkara) bermaksud jumlah penuh gantirugi yang boleh didapati - Samada merujuk kepada jumlah defendan sebenarnya dikehendaki membayar.*

Dalam tindakan untuk gantirugi yang terbit daripada satu kemalangan jalanraya ini, Mahkamah Tinggi telah menaksirkan gantirugi pada kadar tanggungan 100% iaitu RM250,050.34. Responden didapati telah menyumbang kepada kecuaian sehingga had 25%, dan gantirugi yang boleh didapati telah dikurangkan kepada RM187,537.84. Perayu telah berniat untuk merayu terhadap keputusan tersebut, dan memikirkan bahawa "value of the subject-matter of the claim" (nilai hal-perkara tuntutan tersebut) adalah kurang daripada RM250,000, telah memfailkan satu notis usul untuk mendapatkan kebenaran. Usul tersebut hanya tiba untuk penyelesaian selepas luputnya tempoh satu bulan daripada tarikh keputusan tersebut. Di hadapan Mahkamah Rayuan, responden berhujah bahawa tempoh lanjutan tidak seharusnya diberikan kerana kelewatan tersebut adalah disebabkan oleh kesilapan Peguam. Menurut responden, perayu seharusnya telah memfailkan notis rayuan serta merta kerana jumlah sepenuhnya yang boleh didapati adalah lebih, dan bukannya kurang daripada RM250,000. Satu-satunya isu yang berbangkit adalah berhubung dengan maksud sebenarnya yang harus diberikan kepada ungkapan "value of the subject-matter of the claim" (nilai hal-perkara tuntutan) dalam s. 68(l)(a) Akta Mahkamah Kehakiman 1964.

Diputuskan:

Mahadev Shanker HMR (menyampaikan penghakiman Mahkamah):

Seksyen 68(l)(a) sepertimana maksudnya adalah tidak memuaskan kerana ianya tidak tepat. Kerana hal ini, adalah tidak betul untuk menghukum perayu kerana tidak memfailkan notis rayuan tersebut dalam tempohnya. Oleh itu sungguhpun Mahkamah memutuskan bahawa kebenaran tidak diperlukan dalam kes ini, ianya adalah diarah supaya masa untuk pemfailan sesuatu notis rayuan hendaklah dilanjutkan selama satu minggu.

Per Curiam:

Ianya lebih baik bahawa s. 68(l)(a) haruslah disusun-semula bagi memperuntukkan bahawa tiada rayuan harus dikemukakan tanpa kebenaran di mana penghakiman yang dirayui adalah bagi pembayaran jumlah wang yang kurang daripada RM250,000, tidak termasuk faedah dan kos.

[Permohonan ditolak, tetapi masa untuk memfailkan notis dilanjutkan].

Case referred to:
State of Maharashtra v. Mishrilal AIR [1964] Supreme Court 457 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 12(2)
Courts of Judicature Act 1964, s. 68(1)(a)

Other sources referred to:
Butterworth's "Words and Phrases"Legally Defined, 3rd Edn., p. 380

For the appellant - Sin Yoong Ming; M/s. Othman Hashim & Co.
For the plaintiff/respondent - M. Thiruchelvasegaram; M/s. M. Segaram & Co.

JUDGMENT

Mahadev Shankar JCA:

This application for leave to appeal has raised in sharp focus the ambiguities involved in the words "value of the subject-matter of the claim" in s. 68(1)(a) of the Courts of Judicature Act 1964.

The action in the Court below was a runner. The plaintiff claimed damages for the defendant's negligence. By filing the action in High Court in 1993 it follows that the quantum of damages claimed was in excess of the statutory jurisdiction of the Sessions Court at that time i.e. RM100,000. (This was increased to RM250,000 by Act A887 on 24 June 1994).

The defendant pleaded contributory negligence. At the conclusion of the trial the Judge found the plaintiff 25% to blame. As required by s. 12(2) of the Civil Law Act 1956 the trial Judge found the total damages recoverable, if the plaintiff had not been at fault, to be RM250,050.34. He then reduced the damages recoverable having regard to the plaintiff's share of blame to RM187,537.84.

We propose to assume for the purpose of this judgment that on the basis of 100% liability the plaintiff hoped to recover a sum in excess of RM250,000. The defendant took the view that since all he was called upon to pay was below RM250,000 he had to obtain leave to appeal. So he filed the required notice of motion in due time supported by the necessary affidavit and served it upon the plaintiff's solicitors.

However by the time this motion came up for disposal the period of one month from the date of the decision had long since expired. The plaintiff/respondent contended that since the trial Judge had found the total sum recoverable to be more than RM250,000 that was "the value of the subject-matter of the claim", no leave was required, and the defendant should therefore have filed his notice straightaway. Therefore no extension of time should be given because the delay was due to Counsel's error which was not an excuse or a special circumstance.

It is curious that the present problem has not come up before. Neither Counsel assisted us with any cases and left us to our own devices.

"Value" is a word of "very elastic meaning" and has bedevilled litigation in a number of other areas: See *Butterworth's "Words and Phrases" Legally Defined* (3rd Edition) at page 380. The Indian Civil Procedure Code requires a stamp fee to be paid on "the value of the subject-matter in dispute" when the suit is filed or an appeal lodged. In appeals to the Privy Council leave to appeal was only given in cases where "the value of the matter in dispute" exceeded a certain figure.

In the *State of Maharashtra v. Mishrilal* AIR [1964] Supreme Court 457 it was decided that a revenue statute should be strictly construed and therefore any sums awarded in excess of the amount due at the time of filing the action should be excluded, and a statute giving leave to appeal should be liberally construed. Such an approach if applied in Malaysia could side-track the purpose of s. 68(1)(a) because claimants could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.

We therefore think it preferable that s. 68(1)(a) should be reworded to provide that no appeal should be brought without leave where the judgment appealed against is for the payment of a monetary sum which is less than RM250,000 - exclusive of interest and costs.

The section as it stands is unsatisfactory because it is not precise. Because of this we did not think it right to penalise the applicant in the manner suggested. So even though we held that leave was not required in this case we directed that the time for filing a notice of appeal be extended for a week.